

JS 44 (Rev 06/17)

CIVIL COVER SHEET

19-CV-807

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Michael Cona

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Cona Law Firm, 1500 JFK Blvd, Ste. 620
19102, 215-735-1135

DEFENDANTS

David Grasso

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF

DEF

☒ 1☒ 1

Incorporated or Principal Place of Business In This State

PTF

DEF

☐ 4☐ 4

Citizen of Another State

☐ 2☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

☐ 6☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

29 USC 201

Brief description of cause

Tip skimming

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

150,000 +

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

N/A

DOCKET NUMBER

N/A

DATE

2/25/19

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FEB 25 2019

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

CMRUNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF PENNSYLVANIA

19

8071

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 1500 JFK Blvd, Ste 620, Phila, PA 19102

Address of Defendant: 38 S. 15th St., Ste 1000, Phila, PA 19102

Place of Accident, Incident or Transaction: Phila, PA

RELATED CASE, IF ANY:Case Number: NA Judge: _____ Date Terminated: _____

Civil cases are deemed related when Yes is answered to any of the following questions

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE 2/25/19 Attorney-at-Law / Pro Se Plaintiff _____ Attorney I D # (if applicable) _____**CIVIL: (Place a ✓ in one category only)****A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases
(Please specify) 29 USC 201

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify) _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Conor Connam, counsel of record or pro se plaintiff, do hereby certify☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:☐ Relief other than monetary damages is sought.

FEB 25 2019

DATE 2/25/19 Attorney-at-Law / Pro Se Plaintiff _____ Attorney I D # (if applicable) 89111

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

CMR

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Cona

v.

Grasso

:

:

:

:

:

CIVIL ACTION

19

807

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

2/25/19
Date

Conor Conna
Attorney-at-law

Attorney for Plaintiff

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Telephone

215-735-1175
FAX Number

conor@jccesq.com
E-Mail Address

FEB 25 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL CONA, <i>on behalf of himself</i>	:	CIVIL ACTION
<i>and similarly situated employees,</i>	:	NO.
Plaintiff,	:	JURY TRIAL DEMANDED
v.	:	
DAVID GRASSO; RANDALL COOK;	:	
METHOD HOSPITALITY PB, INC.; and	:	
MICHAEL JREIDINI,	:	

COMPLAINT - CLASS/COLLECTIVE ACTION

The Plaintiff, Michael Cona (“Plaintiff”), alleges this class/collective action lawsuit against Defendants David Grasso; Randall Cook; Method Hospitality PB, Inc.; and Michael Jreidini (collectively “Defendants”), seeking claims and relief pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act of 1968 (“PMWA”), 43 P.S. §§333.101, *et seq.*, and the Philadelphia Gratuity Protection Bill (“GPB”), Philadelphia Code § 9-614.

The Plaintiff’s FLSA claim is asserted as a collective action under FLSA Section 16(b), 29 U.S.C. § 216(b), and his PMWA and GPB claims are asserted as a class action under Federal Rule of Civil Procedure 23. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012) (FLSA collective actions and Rule 23 class actions may proceed together in same lawsuit). The following allegations are based upon the Plaintiff’s personal knowledge as to his own conduct, and upon the Plaintiff’s information and belief as to the acts of others.

JURISDICTION AND VENUE

1. The Eastern District of Pennsylvania has subject matter jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. The Eastern District of Pennsylvania has subject matter jurisdiction over the PMWA and GPB claims pursuant to 28 U.S.C. § 1367.
3. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff is an adult individual residing in Philadelphia, PA (Philadelphia County), who can be served with process at the office of his undersigned counsel, at 1500 JFK Boulevard, Suite 620, Philadelphia, PA 19102.
5. Plaintiff is an employee covered by the FLSA, PMWA and GPB and entitled to the protections thereof.
6. Defendant David Grasso is an adult individual who regularly conducts business at a restaurant called Wm. Mulherin's Sons, located at 1355 N. Front Street, Philadelphia, PA 19122, and/or at the office of co-Defendant Method Hospitality PB, Inc., 30 S. 15th Street, Suite 1000, Philadelphia, PA 19102. At any and all times relevant, Defendant Grasso was operating in his own individual capacity, and/or as an owner, operator, shareholder and/or agent of Method Hospitality PB, Inc.
7. Defendant Randall Cook is an adult individual who regularly conducts business at a restaurant called Wm. Mulherin's Sons, located at 1355 N. Front Street, Philadelphia, PA 19122, and/or at the office of co-Defendant Method Hospitality PB, Inc., 30 S. 15th Street, Suite 1000, Philadelphia, PA 19102. At any and all times relevant, Defendant Cook was operating in his own individual capacity, and/or as an owner, operator, shareholder and/or agent of Method Hospitality PB, Inc.
8. Defendant Method Hospitality PB, Inc. is a Pennsylvania corporation regularly conducting business at 30 S. 15th Street, Suite 1000, Philadelphia, PA 19102, and/or at a

restaurant called Wm. Mulherin's Sons, located at 1355 N. Front Street, Philadelphia, PA 19122 (hereinafter "Method Hospitality.")

9. Defendant Michael Jreidini is an adult individual regularly conducting business at a restaurant located at 1528 Frankford Avenue, Philadelphia, PA 19125. Upon information and belief, at any and all times relevant and as further set forth herein at length, Defendant Jreidini was an agent, servant, workman and/or employee of Defendants Grasso, Cook, and/or Method Hospitality.

10. Defendants employed individuals, including Plaintiff, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person.

11. Defendants are employers covered by the FLSA, PMWA, and GPB.

FACTUAL ALLEGATIONS

12. The restaurant "Wm. Mulherin's Sons" (hereinafter "the restaurant") is owned, operated, and overseen by Defendants Grasso, Cook, and Method Hospitality, and/or Defendant Jreidini. Defendant Jreidini was the general manager thereof until March 14, 2018.

13. Defendants Grasso, Cook, and Jreidini were responsible for the day-to-day operations of the restaurant including, *inter alia*, requesting receivables and other supplies from third party vendors; the employment, termination, supervision and work schedule orchestration of the employees at the restaurant, and/or ordering the compulsory distribution of tips, otherwise known as "tip skimming," as more fully set forth herein at length.

14. Since the restaurant opened on March 29, 2016, through the date of this filing, the Defendants have jointly employed at least 60 individuals as servers at the restaurant.

15. The restaurant's servers are primarily responsible for receiving the food and drink orders from the restaurant's customers, serving such requests for food and drink to the customers, and

otherwise waiting on customers at their seated tables, and/or at the bar(s), located within the restaurant.

16. Plaintiff was employed by Defendants as a server at the restaurant from March 29, 2016 until March 14, 2018.

17. Defendants paid Plaintiff and other servers at the restaurant an hourly wage of \$2.83 plus tips.

18. In purported compliance with the FLSA and PMWA requirements that employees are entitled to a minimum wage of \$7.25/hour, the Defendants allegedly used a “tip credit” totaling \$4.42 (\$7.25 - \$2.83) for each hour worked by the Plaintiff and other servers at the restaurant. See 29 U.S.C. § 203(m); 43 P.S. § 333.103(d).

19. Throughout the Plaintiff’s tenure at the restaurant, the Defendants compelled the Plaintiff and other servers at the restaurant to pay a portion of the tips they received from customers each shift to other support staff employees of the restaurant, such as bussers, polishers, water runners or cleaners, and/or managers, a process commonly known as “tip skimming.”

20. The tip skimming was orchestrated in the following fashion, according to a boilerplate formula upon an Excel spreadsheet, by Defendant Grasso, Defendant Cook, and/or Defendant Jreidini, to wit:

- A. Tips from customers at the restaurant were initially split into two pools: the bartender pool (Pool A), and the server pool (Pool B);
- B. 2% of each pool was paid to the host/hostess (Pool C), and 14% of each pool was paid to the support staff (Pool D);
- C. Then, 8% to 12% of the server pool (Pool B) was then moved to the bartender pool (Pool A), at the rate of 4% per bartender, per shift;
- D. Then, Defendant Jreidini then unilaterally altered Pool D, as follows:
 - 1. Pool D was divided by the number of hours worked by each support staff person, according to the following scale:
 - a. Class A support staff that ran food in all areas of the restaurant, received 100% of Pool D, divided by hour;

- b. Class B support staff that ran food in the upstairs, less formal area of the restaurant, received 90% of Pool D, divided by hour; and,
- c. Class C support staff that only polished silverware, and did not otherwise run any food to the tables or have any customer interaction whatsoever, received 80% of the Pool D, divided by hour.

21. By way of further example, using the aforementioned formula upon a total tip pool of Four Thousand Dollars (\$4,000.00) on a usual weekend night, tip skimming would occur in the following fashion:

- A. There would be perhaps \$1,000 in Pool A, and \$3,000 in Pool B;
- B. 2% of that gross sum of \$4,000 would be paid to Pool C (totaling \$80);
- C. 14% of that gross sum of \$4,000 would be paid to Pool D (totaling \$560);
- D. Then, 8% to 12% of the balance of Pool B would be given to Pool A;
- E. Then, Defendant Jreidini would further divide Pool D as follows:
 - 1. Presuming there were three (3) support staff on an eight (8) hour shift, for a total of 24 work hours, the \$560 in Pool D is divided by 24 work hours, for \$23.33 per hour worked by support staff;
 - a. Class A support staff would accordingly receive 100% of the \$23.33 in tips per hour worked;
 - b. Class B support staff would accordingly receive 90% of the \$23.33 in tips per hour worked, for a total of \$20.99 per hour worked;
 - c. Class C support staff would accordingly receive 80% of the \$23.33 in tips per hour worked, for a total of \$18.66 per hour worked.

22. Upon information and belief, the missing money deductions from the Class B and Class C support staff was never reimbursed to Pool A or Pool B, but instead went straight into the pockets of Defendants Grasso, Cook, Method Hospitality and/or Jreidini.

23. Upon information and belief and as a consequence of the tip skimming formula from Plaintiff and others similarly situated, Plaintiff believes that he usually took home less than 50% of the tips that he, and others similarly situated, received from tableside customers at the restaurant.

COLLECTIVE AND CLASS ALLEGATIONS

24. Plaintiff brings his FLSA claim pursuant to 29 U.S.C. § 216(b) on behalf of himself and all individuals employed as servers at the restaurant between the opening date of the restaurant on from March 29, 2016 and the date of Plaintiff's departure on March 14, 2018, and/or until such time as the Defendants cease tip skimming.

25. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

26. Plaintiff brings his PMWA and GPB claims pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals employed as servers at one of the Restaurants between the opening date of the restaurant on from March 29, 2016 and the date of Plaintiff's departure on March 14, 2018, and/or until such time as the Defendants cease tip skimming.

27. The putative class, upon information and belief, includes at least 60 individuals, all of whom are readily ascertainable based on Defendants' standard timekeeping and payroll records, and, as such, is so numerous that joinder of all class members is impracticable.

28. Plaintiff is a class member, his claims are typical of the claims of other class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

29. Plaintiff will fairly and adequately represent the class members and their interests, and he has retained competent and experienced counsel who will effectively represent the class members' interests.

30. Questions of law and fact are common to all class members, since, *inter alia*, this action concerns the legality of Defendants' standardized compensation practices, including Defendants' practices of using the tip credit to satisfy its minimum wage obligations and

compulsory tip skimming upon class members to share tips with silverware polishers and restaurant managers as aforementioned.

31. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any questions affecting only Plaintiff and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
F.L.S.A.
ALL PLAINTIFFS v. ALL DEFENDANTS

32. Averments 1 through 32 are hereby incorporated as though fully set forth herein at length.

33. The F.L.S.A. guarantees employees a minimum hourly wage of \$7.25.

33. While a restaurant can use a tip credit to relieve it of its minimum wage obligations to servers, it abandons the right to use tip credits where it engages in “tip skimming” and/or otherwise enforces a policy of compulsory tip sharing with other restaurant employees who have little or no direct customer interaction, and/or work as managers or supervisors of the restaurant. See Ford v. Lehigh Valley Restaurant Group, Inc., 2014 U.S. Dist. LEXIS 92801 (M.D. Pa. July 9, 2014).

34. By requiring the Plaintiff and other servers to share tips with support staff and/or Defendants herein as aforementioned, the Defendants have forfeited their right to utilize the tip credit in satisfying their minimum wage obligations to Plaintiff and other servers. As such, Defendants have violated the F.L.S.A.’s minimum wage requirements by paying Plaintiff and other servers an hourly wage of \$2.83 rather than \$7.25.

35. In violating the F.L.S.A., the Defendants acted willfully and with reckless disregard of clearly applicable F.L.S.A. provisions.

WHEREFORE, Plaintiff, on behalf of himself and other members of the class/collective, seeks judgment in his and their favor, and against the Defendants, in an amount in excess of \$150,000 (ONE HUNDRED FIFTY THOUSAND DOLLARS), as follows:

- A. \$4.42 for every hour of labor left unremunerated;
- B. Reimbursement of tips shared with support staff and restaurant managers;
- C. Prejudgment interest to the extent permitted under federal and state law;
- D. Liquidated damages per the F.L.S.A.;
- E. Exemplary damages per the G.P.B.;
- F. Costs, expenses, and reasonable attorneys' fees; and,
- G. Such other and further relief as this Court deems just and proper.

COUNT II
P.M.W.A.
ALL PLAINTIFFS v. ALL DEFENDANTS

36. Averments 1 through 35 are hereby incorporated as though fully set forth herein at length.

37. The P.M.W.A. guarantees employees to a minimum hourly wage of \$7.25.

38. While a restaurant can use a tip credit to satisfy its minimum wage obligations to servers, it abandons the right to do so where it engages in “tip skimming” and/or otherwise enforces a policy of compulsory tip sharing with other restaurant employees who have little or no direct customer interaction, and/or work as managers or supervisors of the restaurant.. See Ford v. Lehigh Valley Restaurant Group, Inc., 2015 Pa. Dist. & Cnty. Dec. LEXIS 11 (P.C.C.P., Lackawanna Cty. Apr. 24, 2015) (Nealon, J.).

39. By requiring the Plaintiff and other servers to share tips with support staff and/or Defendants herein as aforementioned, the Defendants have forfeited their right to utilize the tip credit in satisfying their minimum wage obligations to Plaintiff and other servers. As such, the

Defendants have violated the P.M.W.A.'s minimum wage requirements by paying Plaintiff and other servers an hourly wage of \$2.83 rather than \$7.25.

WHEREFORE, Plaintiff, on behalf of himself and other members of the class/collective, seeks judgment in his and their favor, and against the Defendants, in an amount in excess of \$150,000 (ONE HUNDRED FIFTY THOUSAND DOLLARS), as follows:

- A. \$4.42 for every hour of labor left unremunerated;
- B. Reimbursement of tips shared with support staff and restaurant managers;
- C. Prejudgment interest to the extent permitted under federal and state law;
- D. Liquidated damages per the F.L.S.A.;
- E. Exemplary damages per the G.P.B.;
- F. Costs, expenses, and reasonable attorneys' fees; and,
- G. Such other and further relief as this Court deems just and proper.

COUNT III

G.P.B.

ALL PLAINTIFFS v. ALL DEFENDANTS

40. Averments 1 through 39 are hereby incorporated as though fully set forth herein at length.

41. The GPB requires that "[e]very gratuity shall be the sole property of the employee or employees to who it was paid, given or left for, and shall be paid over in full to such employee or employees." Phila. Code § 9-614(2)(a).

42. Defendants violated the GPB by compelling Plaintiff and other servers to surrender a portion of their tips to the restaurant's manager and/or support staff.

WHEREFORE, Plaintiff, on behalf of himself and other members of the class/collective, seeks judgment in his and their favor, and against the Defendants, in an amount in excess of \$150,000 (ONE HUNDRED FIFTY THOUSAND DOLLARS), as follows:

- A. \$4.42 for every hour of labor left unremunerated;
- B. Reimbursement of tips shared with support staff and restaurant managers;
- C. Prejudgment interest to the extent permitted under federal and state law;
- D. Liquidated damages per the F.L.S.A.;
- E. Exemplary damages per the G.P.B.;
- F. Costs, expenses, and reasonable attorneys' fees; and,
- G. Such other and further relief as this Court deems just and proper.

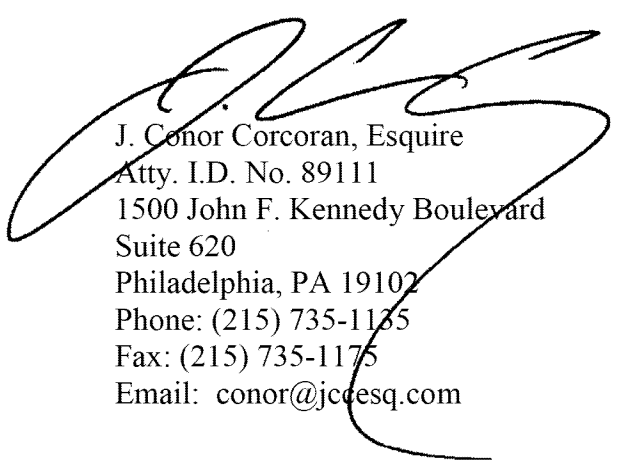
JURY TRIAL DEMAND

Plaintiff demands a jury trial as to all claims so triable.

Respectfully Submitted,

LAW OFFICE OF J. CONOR CORCORAN, P.C.

Date: February 24, 2019



J. Conor Corcoran, Esquire
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Suite 620
Philadelphia, PA 19102
Phone: (215) 735-1135
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